

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TOLEDO MACK SALES &  
SERVICE, INC.,

Plaintiff,

V.

MACK TRUCKS, INC.

Defendant.

Civil Action No. 2:02-CV-04373-RLB

## JURY TRIAL DEMANDED

MACK TRUCKS, INC.,

Counterclaim  
Plaintiff,

v.

TOLEDO MACK SALES & SERVICE,  
INC.,

Counterclaim  
Defendant.

## JURY TRIAL DEMANDED

**THIRD SUPPLEMENTAL PROPOSED JURY INSTRUCTIONS OF  
DEFENDANT/COUNTERCLAIM PLAINTIFF MACK TRUCKS, INC.**

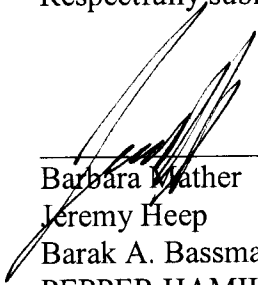
In light of yesterday’s ruling by the Court that Toledo Mack’s remaining claims are limited to the statutory time period, Mack hereby submits a proposed jury instruction to exclude the testimony of Donald A. Nichols, Ph.D. In addition to the reasons set forth in Mack’s previous Motion in Limine and proposed jury instruction pertaining to Dr. Nichols, the testimony should be excluded because it is wholly reliant upon a damages projection that is connected to alleged conduct by Mack in the 1980’s, and is completely divorced from any alleged conduct beginning in 1996 or 1998. (See, e.g., Toledo Mack’s Demonstrative slide “Three Steps to

Damage Calculation: Step 1: Growth Rate During 1985-1988,” Exh. A.) While Dr. Nichols did present tables assuming damages are limited to those periods, those tables are based on the assumption that Toledo Mack was prevented from growing during a period for which the claim has already been time-barred. Dr. Nichols did not present an alternative basis for estimating damages during the statutory periods.

**Third Supplemental Proposed Instruction No. 1 – Exclusion of Dr. Nichols**

In considering whether to award any damages in his case, you are instructed to disregard to the testimony presented by Toledo Mack’s damages expert, Dr. Donald A. Nichols, Ph.D.

Respectfully submitted,



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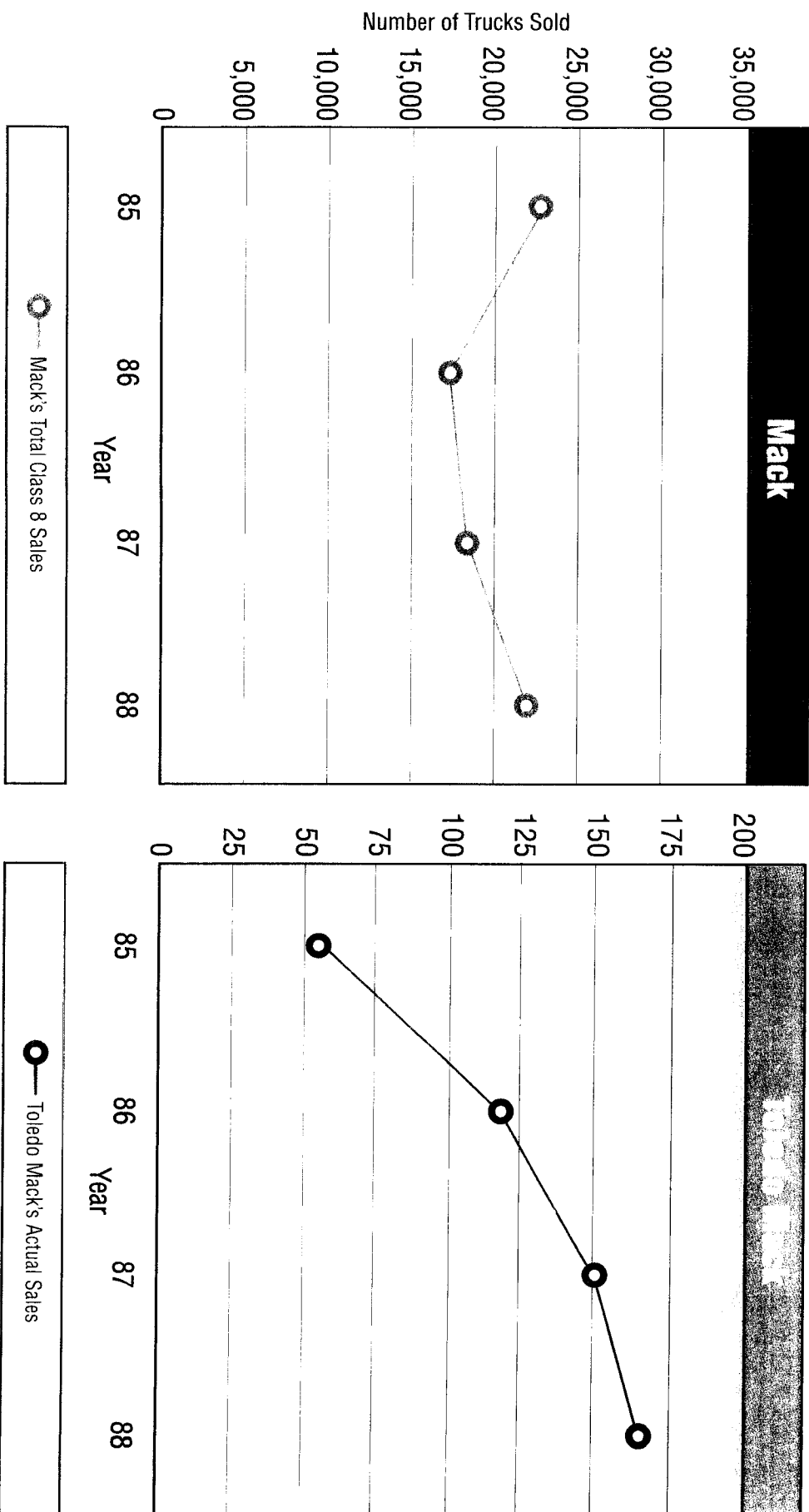
Attorneys for Defendant/Counterclaim Plaintiff  
Mack Trucks, Inc.

Dated: October 5, 2006

## **EXHIBIT A**

# Three Steps to Damage Calculation

## Step 1: Growth Rate During 1985-1988



**CERTIFICATE OF SERVICE**

I, Jeremy Heep, hereby certify that on October 5, 2006 a true and correct copy of the foregoing Defendant/Counterclaim Plaintiff Mack Trucks, Inc.'s Third Supplemental Proposed Jury Instructions, was served via hand delivery upon the following:

Wayne Mack  
J. Manly Parks  
Duane Morris LLP  
30 South 17<sup>th</sup> Street  
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Jeremy Heep